IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

GIFT TAX REFERENCE No 2 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF GIFT-TAX

Versus

MANEKLAL HARGOVANDAS PATEL

Appearance:

1. GIFT TAX REFERENCE No. 2 of 1991
MR TANVISH R BHATT for Petitioner No. 1
SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 04/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following question has been referred for our opinion

in respect of assessment year 1981-82 :-

"Whether, the Appellate Tribunal is right in law and on facts in holding that when the assessee had reduced his share in partnership firm from 25% to 4% there was no taxable gift ?"

2. The assessee reduced his share of 25% in a partnership firm to 4% with the result that the shares of the other three partners correspondingly went up to exactly the percentage by which the assessee's share was reduced. The Gift-tax Officer valued this 21% share by taking into account the average 5 years profit and debiting three years' purchase thereon ultimately arriving at a figure amounting to Rs.90,247/-. The assessee had already declared a gift amounting to Rs.25,000/- and, therefore, the Gift-tax Officer totalled up both these figures and after giving the basic exemption arrived at a figure of Rs.1,10,247/-. The Gift-tax Officer also applied aggregation on the basis of last 4 year's gift of Rs.45,000/-. The Appellate Assistant Commissioner confirmed the order made by the Gift-tax Officer. The Appellate Tribunal relying on its earlier decision in the case of Sakerchand Manilal (decd.) vs. The Gift-tax Officer, Circle II, Ward-K, Ahmedabad held that there was no gift in this case. Hence, this reference at the instance of the revenue.

3 We have heard Mr Tanvish Bhatt, learned standing counsel for the applicant-revenue. Though served, none appears for the respondent-assessee.

4. Having heard Mr Tanvish Bhatt, learned standing counsel for the revenue and having considered the decisions of the Supreme Court in Commissioner of Gift-tax vs. Chhotalal Mohanlal, (1987) 166 ITR 124 and Commissioner of Gift-tax vs. T.M. Louiz, (2000) 245 ITR 831 and also Commissioner of Gift-tax vs. D.C. Shah & Ors., (2001) 249 ITR 518, we are of the view that in the facts and circumstances of the case the finding given by the Tribunal in favour of the assessee that there was no gift in respect of the partnership share for the year under consideration cannot be faulted with. In Commissioner of Gift-tax vs. D.C. Shah (Supra), the Apex Court has held in no unmistakable terms that when the share of one partner in a firm is decreased and that of another partner correspondingly increased, it does not necessarily lead to the inference that the former had gifted the difference to the latter. The profit sharing ratio in a firm can vary for a number of reasons, among them the ability of the partners to devote time to the

business of the firm. The gift of a part of a partner's share to another has to be established by relevant evidence and the onus of doing so is on the revenue.

In the facts of the instant case, apart from the revenue not discharging the onus, the facts brought on record by the assessee are that the partner whose share was reduced from 25% to 4% was 80 years of age and was totally blind and, therefore, was physically unfit for continuing as a partner of the firm and, therefore, it was necessary to transfer his right to share partnership profits to the other partners.

In view of the aforesaid facts, the aforesaid decision of the Apex Court in the case of D.C. Shah (supra) is squarely applicable. The decisions of the Apex Court in Chhotalal Mohanlal and T.M. Louiz have already been considered and explained by this Court in the decision dated 25.9.2001 in Gift-tax Reference No. 2 of 1987 (Commissioner of Gift-tax vs. Arunbhai Hargovandas Patel).

5. Accordingly, our answer to the question referred to us is in the affirmative i.e. in favour of the assessee and against the revenue.

The reference accordingly stands disposed of with no order as costs.

(M.S. Shah, J.) (K.A. Puj, J.)

sundar/-